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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**JACOB ANTHONY,**

**07-CV-698-HU**

**Plaintiff,**

**ORDER**

**v.**

**CORPORAL ESTHER SHACKMANN  
and CORPORAL KENNETH STEPP,**

**Defendants.**

**JACOB ANTHONY**

#10146552

Two Rivers Correctional Institution

82911 Beach Access Road

Umatilla, OR 97882

**Plaintiff, Pro Se**

1- ORDER

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**BROWN, Judge.**

Magistrate Judge Dennis James Hubel issued Findings and Recommendation (#44) on January 26, 2009, in which he recommends the Court grant Defendants' Motion for Summary Judgment (#32). Plaintiff filed Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988).

This Court has carefully considered Plaintiff's Objections and concludes they do not provide a basis to modify the Findings and Recommendation. For example, the Court concludes the Magistrate Judge, after properly viewing the facts in the light most favorable to Plaintiff, concluded Corporal Esther

Schackmann's slapping of Plaintiff was a *de minimis* use of force and, therefore, Corporal Schackmann did not violate Plaintiff's rights under the Eighth Amendment. Similarly, the Magistrate Judge properly found the record reflects neither named Defendant was responsible for Plaintiff's transfer to the Disciplinary Segregation Unit (DSU) and, therefore, Plaintiff may not sustain a First Amendment claim against Defendants. Finally, the Magistrate Judge properly concluded Plaintiff has not established a claim for violation of his right to due process under the Fourteenth Amendment because Plaintiff received all of the process he was due relating to his transfer to the DSU.

The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

#### **CONCLUSION**

The Court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation (#44) and, therefore, **GRANTS** Defendants' Motion for Summary Judgment (#32).

IT IS SO ORDERED.

DATED this 16<sup>th</sup> day of April, 2009.

  
ANNA J. BROWN  
United States District Judge